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FINANCIAL, BUDGETARY AND ADMINISTRATIVE MATTERS

Responsibility of the United Nations Office for Project Services in personnel matters

Report of the Executive Director

I. BACKGROUND

1. The present report, which has been prepared in response to Executive Board decision 99/12 of 22 June 1999, outlines in detail the responsibility of the United Nations Office for Project Services (UNOPS) in personnel matters, with a view to obtaining a decision at the current session on the delegation of authority in the areas of personnel.

2. In accordance with the provisions of Executive Board decision 95/1 of 10 January 1995, the report has been reviewed and cleared by the Management Coordination Committee (MCC).

3. As requested by the Executive Board in its decision 99/12, the report has been prepared in collaboration with the Administrator and in consultation with all interested parties on all relevant legal, budgetary, staff and policy implications. In particular, UNOPS has consulted the Office of Legal Affairs of the United Nations Secretariat, the Under-Secretary-General of the Department of Management, the UNDP/UNFPA/UNOPS Staff Council and the UNOPS Staff Management Forum. In preparing the present report, UNOPS has also taken into account feedback received from UNOPS clients who have a vested interest in the UNOPS personnel regime by virtue of the nature of services rendered to them.

4. As referred to in paragraph 55 of the annual report of the Executive Director (DP/1999/22), UNOPS seeks to implement Executive Board decision 94/32 of 10 October 1994, in which the Board took note of the reports of the Executive Director contained in documents DP/1994/62 and DP/1994/62/Add.1-3, and by which

the Administrator and the Executive Director were authorized to proceed further with the implementation of decision 94/12, thereby establishing UNOPS as a separate and identifiable entity. In paragraph 50 of document DP/1994/62, which was prepared pursuant to decision 94/12, the Executive Director outlined the basic framework for the personnel arrangements of UNOPS, providing that authority in all personnel matters, except for that retained by the Secretary-General, or, with respect to current staff holding UNDP letters of appointment, by the UNDP Administrator, should be vested in the Executive Director.

5. A number of principles under which UNOPS would operate as of 1 January 1995 were listed in document DP/1994/62, e.g.: paragraph 2 (c), "[UNOPS] shall undertake implementation activities for UNDP, other United Nations operational entities, and others who wish to utilize its services"; paragraph 2 (d), "[UNOPS] shall employ operational modalities that enhance its effectiveness and responsiveness to the needs of its clients". Building on these principles, it was stated in paragraph 50 of document DP/1994/62 that the Executive Director "shall establish procedures and create such management tools as may be required to discharge his responsibility, and to ensure the cost-effective and business-like operation of UNOPS". Furthermore, in paragraph 71 of the same report, it was brought to the attention of the Board that additional proposals intended to further the ability of UNOPS to respond to evolving client needs would be submitted for approval in due course. The Executive Director, therefore, hereby seeks from the Executive Board an endorsement of his request that the delegation of authority in personnel matters be issued by the Secretary-General to UNOPS, including, inter alia, the authority for UNOPS to issue its own letters of appointment.

II. OBJECTIVES

6. The report of the Executive Director contained in document DP/1994/62 referred to above was prepared in collaboration with the Administrator. The operational modalities for personnel matters, described in paragraphs 48-71 of the report, were developed by a joint UNDP/UNOPS working group on personnel matters. In developing those modalities, the working group adopted the following principles:

(a) The need to establish and maintain an effective policy and procedural framework within which UNOPS manages and administers its human resources;

(b) The need to preserve the contractual status, acquired rights, and entitlements of staff holding UNDP letters of appointment;

(c) The need to define, implement and maintain recruitment procedures and administration arrangements applicable to UNOPS personnel hired after 1 January 1995;

(d) The need to identify personnel measures that enable UNOPS to function in an effective, business-like and responsive manner.

The above principles remain applicable.

7. In preparation of document DP/1994/62, the joint working group focused mainly on personnel financed from the administrative budget. Nevertheless, in paragraph 70 of the report, reference was made to the responsibility of the Executive Director in the area of project personnel, including the authority to recruit, administer and separate project personnel at all levels in accordance with the United Nations Staff Regulations and Rules. The report specified that the Executive Director would exercise that authority, remaining, initially, within the framework of the applicable UNDP policies.

8. As communicated to the Executive Board in paragraphs 5 and 6 of the report of the Executive Director contained in document DP/1999/22, and as illustrated in figure 2 of the same report, UNOPS has become increasingly successful in diversifying its client base. The Board has welcomed the continued progress made in this regard in its decision 99/12 of 22 June 1999. Among its new clients, the Office of the High Commissioner for Human Rights (OHCHR) in particular has been a major user of personnel-related services, with UNOPS responsible for appointing, administering and separating staff employed under OHCHR programmes. Similarly, UNOPS has undertaken personnel-related tasks, on an ad hoc basis, for the Department of Political Affairs (DPA) of the United Nations Secretariat. UNOPS continues to provide these services in accordance with the Staff Regulations and Rules, and within the framework of the United Nations common system. However, the appropriate personnel policies and associated procedures may at times be different from those applicable to UNDP.

9. In keeping with the trend of an increasing portfolio acquisition from clients other than UNDP, combined with a decrease in projects funded from UNDP core resources, the number of project personnel employed under projects funded from sources other than UNDP has been steadily increasing, particularly over the period 1997-1999. In 1997, approximately 6 per cent of all international project staff were charged to non-UNDP resources. In 1998, the number of international staff recruited under non-UNDP financed projects increased to 22 per cent of the total. This trend continues with, for the first trimester of 1999, 28 per cent of all newly recruited international staff charged to projects financed from sources other than UNDP.

10. In presenting the present report to the Executive Board, the Executive Director wishes to place emphasis on the need for him to exercise his authority in personnel matters, particularly when it concerns project personnel. While the provisions noted in document DP/1994/62 continue to be applicable to personnel financed from the administrative budget, there is, on the basis of four years of experience during which there has been an increasing diversification in the UNOPS client base, an emerging need to focus on all categories of personnel. UNOPS acknowledges that current arrangements may continue to be adequate in the case of personnel with unrestricted UNDP appointments financed from the administrative budget; however, those arrangements clearly fall short in the case of project-related personnel activities, at times seriously hampering the ability of UNOPS to deliver its services effectively. Consequently, the purpose of obtaining the delegation of authority in personnel matters is to entrust the Executive Director with the authority, and corresponding accountability, to establish policies and procedures, primarily to remain responsive to client needs, bearing in mind that

an increasingly diversified client base requires a broad spectrum of management tools.

III. DETAILS OF THE DELEGATION OF AUTHORITY

11. The delegation of authority will cover the administration of the United Nations Staff Regulations and Rules in respect of UNOPS staff members. As already indicated in paragraph 56 of document DP/1999/22, the delegation will formalize many functions already carried out by UNOPS, allocating the authority and accountability directly to the Executive Director. The delegation will include formal authority to issue UNOPS letters of appointments, which is increasingly important in the environment of a diversified client base.

12. More specifically, the delegation will provide the Executive Director with the authority, under the United Nations Staff Regulations and Rules, to:

(a) Appoint, promote and terminate appointments of staff members;

(b) Determine entitlements to allowances and benefits in accordance with the Staff Regulations, Rules and related directives within the discretionary authority envisaged by the Staff Rules;

(c) Impose disciplinary measures in accordance with chapter X of the Staff Rules;

(d) Review administrative decisions that may be requested by staff members under Staff Rule 111.2 (a);[1]

(e) Approve exceptions to the Staff Rules, subject to the conditions of Staff Rule 112.2 (b).[2]

13. In keeping with standard practice applied to the existing delegations of authority in personnel matters, issued by the Secretary-General, the delegation will not include the authority to:

(a) Award compensation in the event of death, injury or illness attributable to performance of official duties as provided for under Staff Rule 106.4 and appendix D to the Staff Rules;

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[1] Staff Rule 111.2 (a) outlines the process to be followed should a staff member wish to appeal an administrative decision, pursuant to Staff Regulation 11.1.

[2] Staff Rule 112.2 (b) allows for exceptions to the Staff Rules to be made, provided that such exception is not inconsistent with the Staff Regulations or decisions of the General Assembly, and provided that it is agreed to by the affected staff member and it is not prejudicial to the interest of any other staff member or group of staff members.

(b) Interpret the Staff Regulations and Rules in cases involving issues that are likely to conflict with general policy within the United Nations common system;

(c) Take final decision on appeals under Staff Rule 111.2 (b).

14. In a legal opinion issued by the Office of Legal Affairs on 28 March 1998, it was confirmed that, pursuant to the report of the Executive Director contained in document DP/1994/62 and to Executive Board decision 94/32 of 10 October 1994, it would be possible for the Secretary-General to grant a delegation of authority in personnel matters to the Executive Director. Subsequently, following further consultations with the Office of Legal Affairs, and in anticipation of the endorsement by the Executive Board of the request of the Executive Director that the delegation of authority be issued by the Secretary-General, the Office of Legal Affairs forwarded on 22 June 1999, a draft letter of delegation from the Secretary-General to the Executive Director. A copy of this draft delegation is contained in the annex to the present report.

IV. IMPLICATIONS OF THE DELEGATION

A. Legal implications

15. The legal implications of any delegation of authority fall within two general categories: (a) the legislative process for obtaining the delegation; and (b) institutional accountability for application of the Staff Regulations and Rules.

1. The legislative process

16. As noted in paragraph 14 above, in its legal opinion issued on 28 March 1998, the Office of Legal Affairs confirmed that, pursuant to the report of the Executive Director contained in document DP/1994/62 and to Executive Board decision 94/32 of 10 October 1994, it would be possible for the Secretary-General to grant a delegation of authority to the Executive Director of UNOPS. The Office of Legal Affairs recommended that the Executive Board and the Administrator be consulted regarding arrangements for the implementation of the delegation. The Office of Legal Affairs further advised that the endorsement of the Executive Board would be required for the authority to issue letters of appointment since such authority was not expressly provided for in document DP/1994/62. The Office of Legal Affairs has informed UNOPS that any such delegation from the Secretary-General would supersede prior arrangements. Paragraph 32 of the UNDP/UNOPS Memorandum of Understanding dated 3 April 1997 would be amended accordingly.

2. Institutional accountability

17. The legal implications relating to institutional accountability are an important part of the justification for seeking a delegation of authority directly from the Secretary-General. In the absence of any such delegation to

the Executive Director, the Administrator will remain accountable for the application of United Nations Staff Regulations and Rules to all personnel assigned, appointed, seconded or loaned to UNOPS, even where UNDP has no direct role, either as a funding source or otherwise.

18. In his report contained in document DP/1994/62, the Executive Director focused primarily on personnel financed from the administrative budget. However, as indicated under paragraphs 70-71 of the same report, it was already clearly envisaged at that time that additional arrangements would be required in the future to enable the Executive Director to respond to evolving client needs. Especially where it pertains to appointments of project staff under the provision of service agreements with clients other than UNDP, it is essential for UNOPS, as an executing entity and provider of services, to have access to proper contracting tools, including those to hire individual personnel, with the authority and accountability resting solely with the Executive Director.

19. To ensure that the Executive Director is vested with the proper authority and to avoid imposing upon UNDP accountability where it has no direct responsibility, a delegation from the Secretary-General was considered appropriate and confirmed as such by the Office of Legal Affairs in its opinion of 28 March 1998. The legality of a limited sub-delegation by the Administrator of the authority of the Secretary-General, as originally contemplated under paragraph 50 of document DP/1994/62, would fall short of a single, comprehensive system of authority and accountability whereby the Executive Director is directly responsible and accountable for all personnel actions, including those with regard to project personnel.

B. Budgetary implications

20. Any budgetary implications either of activities undertaken directly by UNOPS or services provided to UNOPS by others but paid for by UNOPS will be provided for by UNOPS in the preparation of its regular budget and review. It is expected that the responsibility for exercising this authority will be accommodated within existing UNOPS resources. Additional resources that may be allocated to this administrative responsibility in the future will be provided in keeping with the principle of self-financing and will be directly linked to an increase in business activities.

21. It is not anticipated that the delegation of authority will affect the level of central services currently provided by UNDP. It must be noted, however, that the nature and extent of central services may be subject to periodic negotiation, to reflect possible changes in workflow resulting from factors such as the implementation of the Integrated Management Information System (IMIS) or other systemic changes.

C. Staff implications

22. No staff assigned to UNOPS will be affected by the delegation of authority. As provided for in the report of the Executive Director contained in document DP/1994/62, staff holding UNDP appointments that are not limited to UNOPS will

continue to hold the same letters of appointment. Staff holding UNDP letters of appointment that are limited to service with UNOPS, will, at the time of renewal of their appointment, be issued with UNOPS letters of appointment. The direct accountability of UNOPS under a delegation of authority is expected to streamline personnel administration for all UNOPS staff, whether funded from the administrative or project budget, by providing access to the levels of authority appropriate to their needs. Any potential confusion and delay that may exist as a result of the current interdependency between UNDP and UNOPS regarding the responsibility for the administration of the United Nations Staff Regulations and Rules will be eliminated.

23. Existing arrangements for staff representation shall remain, including the Staff Management Forum and participation in the UNDP/UNFPA/UNOPS Staff Council. All UNOPS personnel will enjoy staff representation from a unified position under the authority of a single source. Greater clarity in accountability will thus enhance the access of staff and their representatives to the levels of authority appropriate to their needs.

D. Policy implications

24. In his report contained in document DP/1994/62, the Executive Director has already established the framework for addressing many of the policy implications of a delegation of authority. It is within this framework that new arrangements under a delegation of authority will be operationalized in order to support UNOPS activities as a separate and identifiable entity. There will be a corresponding need for operational policies to implement the delegation of authority effectively.

25. UNOPS has developed policies to implement its current personnel responsibility derived from UNDP in such matters as appointment and promotion procedures, investigation of misconduct and administrative claims. While continuing to work within the framework of the United Nations common system, UNOPS will assign the responsibility for adapting and augmenting these operational policies to a personnel policy specialist in the UNOPS Human Resources Management Section, with support provided by the Policy and Contracts Division. For this purpose, UNOPS participates in the Consultative Committee on Administrative Questions-Personnel and General Administrative Questions (CCAQ-PER), the United Nations Common Services Task Force and the United Nations Development Group, as well as in the International Civil Service Commission.

26. As already stated in paragraph 55 of document DP/1994/62, any authority required by UNDP to perform agreed services shall be entrusted to UNDP by the Executive Director.

V. SUMMARY

27. As demonstrated in document DP/1999/22, UNOPS has been able to survive and grow, as a self-financing entity, within the framework of the United Nations, living up to the goals established by the Executive Board at the time of its creation in 1995. Much of UNOPS success is derived from its ability to develop

tools and business practices that allow it to remain responsive, efficient and cost-effective in the provision of its services. Since approximately one third of the volume of services relates to the hiring of individuals, either as independent contractors or as staff members, it is essential for UNOPS to be able to develop a dedicated personnel regime, involving changes to the current arrangements, as recognized by the Executive Board in its decision 99/12 of 22 June 1999.

28. It is anticipated that the proposed dedicated personnel regime, established within the framework of the United Nations system, would provide for a single, comprehensive system of personnel authority and accountability, covering all categories of personnel. The present report contains the legislative and institutional grounds on which the personnel regime would be based, as well as the operational modalities under which the Executive Director would exercise his authority in personnel matters.

29. In keeping with the trend set by UNOPS in diversifying its client base, with the corresponding need to be innovative in responding to evolving client needs, UNOPS will continue to seek enhancements in the administration of its personnel. Any additional proposals intended to further improve UNOPS ability in this area will continue to be submitted to the Executive Board for review and endorsement, as appropriate.

VI. EXECUTIVE BOARD ACTION

30. The Executive Board may wish to:

1. Take note of the report of the Executive Director on the responsibility of the United Nations Office for Project Services in personnel matters (DP/1999/38);

2. Endorse the request by the Executive Director that a delegation of authority in the area of personnel be issued by the Secretary-General, including the authority for UNOPS to issue its own letters of appointment.

Annex

DRAFT

Delegation of authority to the UNOPS Executive Director

WHEREAS, Personnel Directive PD/2/65/Add.1 of 14 February 1966 sets out the authority in the field of personnel of the United Nations Development Programme (UNDP) which was delegated by the Secretary-General to the UNDP Administrator and indicates, inter alia, that:

"(a) He [Administrator] appoints, promotes and terminates his staff, provided that staff on secondment from the United Nations may be promoted only for the period of their secondment and terminated only in agreement with the United Nations;

"(b) He determines their entitlement to allowances and benefits in accordance with the staff regulations, staff rules and related directives;

"(c) He grants certain benefits through the exercise of discretionary authority as envisaged by the rules, provided such decisions are in conformity with the general policy applied by the United Nations"

"This delegation of authority excludes:

"(a) Award of compensation in the even of death, injury or illness attributable to the performance of official duties (Rule 106.4 and Appendix D to the Staff Rules);

"(b) Disciplinary measures and appeals involving recourse to the joint advisory bodies established under Rules 110.1 and 111.1;

"(c) Interpretation of the staff regulations and rules in cases involving issues of general policy;

"(d) Exceptions to the staff rules (Rule 112.2)"

WHEREAS, the General Assembly, in the Annex to its resolution 2688 (XXV) of 11 December 1970 provided that:

"the Administrator should continue to have the authority to appoint and administer the staff of the Programme. For this purpose, he should have authority, in consultation with the Secretary-General, to frame such staff rules, consistent with the principles laid down by the General Assembly, as he considers necessary to meet the special problems which arise in the service of the Programme." (Para. 61 of the Annex);

WHEREAS, by a memorandum of 11 October 1971, the Secretary-General revised the delegation to the Administrator set out in PD/2/65/Add.1, so as to, inter alia, delete the exceptions (b) and (d) set out in PD/2/65/Add.1;

WHEREAS, the Secretary-General, by his Note to the UNDP Executive Board (DP/1994/52) of 6 June 1994, proposed:

> "to establish the Office for Project Services as a separate entity headed by an Assistant Secretary-General as the responsible manager under the authority of the Secretary-General. He/she would be responsible and accountable for the day-to-day management of the Office. The Executive Director would report on the activities of OPS to the UNDP Executive Board." (Para. 6);

WHEREAS, the Secretary-General indicated in DP/1994/52 that the overriding objective of his proposal on the Office of Project Services (OPS) was "the elimination of the conflict inherent in UNDP exercising coordination responsibility in relation to the operational activities of the system while retaining, through UNOPS, its own implementation capability" (para. 1) and that "[a]dministrative support for OPS would continue to be provided by UNDP, as a reimbursable service. The existing financial and personnel regime would be maintained." (Para. 10);

WHEREAS, the UNDP Executive Board, by its decision 94/12 of 9 June 1994:

> "Recommend[ed] to the General Assembly that ... the Office for Project Services should become a separate and identifiable entity in a form that does not create a new agency and in partnership with the United Nations Development Programme and other operational entities, whose administrative support, including that relating to financial and personnel matters, will continue to be provided by UNDP and that the Office should continue to work through the UNDP field network" (para. 5);

WHEREAS, the Executive Board, in that decision, requested the Executive Director, in collaboration with the Administrator and subject to the approval by the General Assembly of the recommendation in paragraph 5 of decision 94/12, to present proposals to the Board on ways of establishing UNOPS as a separate and identifiable entity, including proposals concerning "[t]he responsibility of the Office for Project Services in personnel matters" (para. 10 (e));

WHEREAS, the Economic and Social Council, by its decision 1994/284 of 26 July 1994, endorsed the Executive Board decision 94/12 and recommended to the General Assembly to approve the manner of establishment of UNOPS set out in that decision;

WHEREAS, the UNOPS Executive Director, in response to the request of the Executive Board in its decision 94/12, submitted a report to the Executive Board (DP/1994/62) dated 16 August 1994, containing proposals on the responsibility of UNOPS in, inter alia, its personnel matters;

WHEREAS, the Executive Director, in that report, proposed that:

"Authority in all personnel matters, with corresponding accountability, except for that retained by the Secretary-General, or, with respect to current staff holding UNDP letters of appointment, by the UNDP Administrator, shall be vested in the Executive Director through appropriate delegation of authority from the Administrator upon request by the Secretary-General. In line with this delegation, the Executive Director shall establish procedures and create such management tools as may be required to discharge his responsibility, and to ensure the cost-effective and business-like operation of UNOPS, mindful of the need to maintain the best possible working conditions for UNOPS staff" (para. 50);

WHEREAS, the General Assembly, by its decision 48/501 of 19 September 1994, decided that UNOPS "should become a separate and identifiable entity in accordance with the United Nations Development Programme Executive Board decision 94/12 of 9 June 1994";

WHEREAS, the Executive Board, by its decision 94/32 of 10 October 1994, took note of the report of the Executive Director (DP/1994/62 and Add. 1-3) and:

"authorize[d] the Administrator and the Executive Director to proceed further with the implementation of decision 94/12, to this end taking all steps necessary to establish a self-financing United Nations Office for Project Services that will become a separate and identifiable entity as of 1 January 1995." (Para. 3);

WHEREAS, the Advisory Committee on Administrative and Budgetary Questions (ACABQ), in its reports to the Executive Board (DP/1995/45) of 5 September 1995 and DP/1996/38 of 6 August 1996, indicated that:

"... The Committee points out that UNOPS should receive the best value for money for the administrative services provided by UNDP or, without duplicating existing infrastructures, UNOPS should explore the possibility of setting up in-house services for those that could be rendered in a more economical manner." (Para. 13);

WHEREAS, on 3 April 1997, UNDP and UNOPS executed a Memorandum of Understanding (MOU) to "establish the terms of the UNDP and UNOPS partnership with the aim of promoting their respective goals, including UNDP's mission and achieving the development objectives of the programme countries served by UNDP and UNOPS." (Para. 1);

WHEREAS, the MOU provides that:

"In respect of personnel matters the Administrator of UNDP shall delegate the necessary authorities to the Executive Director of UNOPS, pursuant to the provisions of paragraph 50 of DP/1994/62 as may be relevant to carrying out its purposes. The Executive Director shall be accountable to the Administrator for the exercise of such authority." (Para. 20);

WHEREAS, the UNOPS Executive Director, in his annual report to the Executive Board on the activities of UNOPS (DP/1999/2 and Add.1), requested the UNDP Executive Board to:

> "Endorse the issuance by the Secretary-General of a broad delegation of authority in the area of personnel, in accordance with Executive Board decision 94/32 of 10 October 1994, including the authority for UNOPS to issue letters of appointment." (Para. 65 (b));

WHEREAS, the Executive Board, by its decision 99/12,

> "5. Request[ed] the Executive Director of the United Nations Office for Project Services, in collaboration with the Administrator and in consultation with all interested parties on all relevant legal, budgetary, staff and policy implications, to present at the third regular session 1999 a detailed proposal on the responsibility of the Office in personnel matters, as envisioned in decisions 94/12 of 9 June 1994 and 94/32 of 10 October 1994 on the delegation of authority in the areas of personnel, with a view to taking a decision at that session";

WHEREAS, the Executive Director, in response to paragraph 5 of Executive Board decision 99/12, submitted a report [the document symbol] to the Board;

WHEREAS, that report [the document symbol] sets out [the "detailed proposal"...];

WHEREAS, [if and when the above-stated report is taken note of by the Executive Board, a reference could be made to such a decision];

NOW, THEREFORE, the Secretary-General rescinds the authority which has been delegated to the UNDP Administrator to administer the Staff Regulations and Rules in respect of UNOPS staff, and delegates that authority to the UNOPS Executive Director, as follows:

The Executive Director has authority to:

(a) Appoint, promote and terminate appointment of staff members;

(b) Issue UNOPS Letters of Appointment;

(c) Determine the entitlements of staff members to allowances and benefits in accordance with staff regulations, rules and related directives within the discretionary authority envisaged by the staff rules;

(d) Impose disciplinary measures in accordance with Chapter X of the Staff Rules;

(e) Review administrative decisions that may be requested by staff members under

staff rule 111.2 (a) and

(f) Approve of exceptions to the Staff Rules, subject to the conditions of Staff Rule 112.2 (b).

This delegation does not include authority to:

(a) Award compensation on the event of death, injury or illness attributable to the performance of official duties as provided for under rule 105.4 and Appendix D to staff rules;

(b) Interpret the Staff Regulations or Rules in cases involving issues that are likely to conflict with general policy within the common United Nations system; or

(c) Take a final decision on appeals under Staff Rule 111.2 (p).

Authority in matters which are not expressly delegated to the Executive Director shall be retained by the Secretary-General.

The Executive Director shall be accountable to the Secretary-General for the exercise of the delegated authority set out above.